STATE OF MINNESOTA

PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of:

Hennepin County Association of Paramedics and EMTs,

Charging Party

and

Hennepin Healthcare,

Charged Party

CASE NO. 21-U-006
NOTICE OF DISMISSAL

BACKGROUND

On October 26, 2020, the Hennepin County Association of Paramedics and EMT's (Union), filed an Unfair Labor Practice charge (Charge) with the Minnesota Public Employment Relations Board (PERB) against Hennepin Healthcare (Employer). The Charge alleges that the Employer had violated the *Weingarten* rights of the members of the exclusive representative on "multiple occasions." The Union served the Charge upon the Employer on or about October 20, 2020. The PERB served the Charge upon the parties on October 26, 2020. The Union submitted evidence in support of its allegations on November 2, 2020. The Employer filed a response to the Charge with the PERB on November 18, 2020. The Employer was provided with evidence in support of the charge on November 20, 2020, and submitted a more detailed response to the PERB on December 11, 2020. The PERB considered the Charge and supporting evidence at its meeting on February 19, 2021. The PERB Board Chair, Martin Munic, did not participate in the consideration of this Charge.

FINDINGS

The Charge alleges that the Employer violated employees' *Weingarten* rights on "numerous" occasions by denying employees the opportunity to receive requested union representation during conversations regarding "conduct on duty" that might lead to discipline.

The United States Supreme Court, in *NLRB v. J. Weingarten, Inc*., 420 U.S. 251 (1975), upheld the decision of the National Labor Relations Board (NLRB) that found that an employer violated Section 8(a)(1) of the National Labor Relations Act (NLRA) by denying an employee her Section 7 right to "to engage in . . . concerted activities for . . . mutual aid or protection . . . ," when it denied her request for the presence of her union representative at an investigatory interview that she reasonably believed could result in disciplinary action. The Union has not directed the PERB to any decision of a Minnesota court that has held that PELRA grants Minnesota public sector employees this *Weingarten* right recognized by federal private sector labor law. The PERB need not decide in this case whether denial of *Weingarten* rights would constitute an unfair labor practice under Minnesota Statutes §179A.13, because, even if PELRA required protection of state public employees' *Weingarten* rights, the doctrine would not be applicable to the evidence presented by the Union to support this Charge.

Even under federal law, *Weingarten* rights only arise when an employee who reasonably believes that an interview with management may result in disciplinary action both *requests*, and is *thereafter denied,* the presence of a union representative. The Union has not presented evidence to suggest that any employee who reasonably believed an interview could result in disciplinary action was denied union representation after requesting it.

According to the Union's evidence, on June 26, 2020, in a phone call, a supervisor commenced a discussion with employee S.E. about what the supervisor considered S.E.'s

inappropriate communication on his ambulance radio. The supervisor said in the conversation that he wanted S.E. to acknowledge that the communication violated the Employer's policy. S.E. reported that when S.E. asked the supervisor if the conversation could result in discipline, the supervisor responded, "Do you want it to?" S.E. requested that he be afforded *Weingarten* rights. S.E. stated that the supervisor did not respond to the request and the conversation ended. No disciplinary action resulted following that conversation. Thereafter, on July 3, 2020, the Employer conducted a meeting with S.E. in the presence of a Union representative to discuss the same incident. In the July 3 meeting, S.E. said that, in the June 26 conversation, he had replied "no," when asked if he had wanted that conversation to result in discipline. When asked if any discipline had been mentioned in the June 26 conversation, S.E. replied "to the best of my recollection, not that I recall." When asked why, if there was no specific mention of discipline, he thought it could result in discipline, S.E. said, "the reference to previous discipline and the implied threat that if I want to this could lead to discipline." S.E.'s statement acknowledged that the supervisor did not mention any specific discipline and that it was rather only S.E.'s assumption that talking about conduct was an "implied threat" of discipline. S.E. said that, when the supervisor spoke about policy violations, S.E. "started becoming concerned that this was becoming about discipline." No disciplinary action followed the July 3 meeting.

The second incident that the Union alleges led to a violation of rights occurred on August 22, 2020. A supervisor contacted S.E. to address his failure to notify dispatch when there was a delay in the ambulance returning to its station. S.E. asked the supervisor if discipline might possibly result, and when the supervisor replied that it might, S.E. requested a Union representative. In reply, the supervisor requested that S.E. bring the ambulance downtown to switch trucks. The record includes inconsistent recollections of whether, in that conversation, the

supervisor told S.E. that he needed the ambulance to review its camera and tape to further investigate the supervisor's concern about the delay advising dispatch. The supervisor did not question S.E. further about the incident in that conversation, but S.E. believed that being asked to switch trucks was retaliation for seeking Union representation. There is no evidence in the record that the supervisor's request that the ambulance be brought downtown was retaliatory rather that for the purpose of completing the investigation. On September 8, S.E. participated in an investigatory interview with management about the ambulance delay incident with a Union representative present. Affording S.E. an opportunity for Union representation was consistent with the parties' collective bargaining agreement that states that an employee "will not be questioned concerning an administrative investigation of disciplinary action." Labor Agreement, Article 31, Section 8.

In summary, in the June 26 phone call, regardless of whether the content of the conversation initially could have given S.E. a reasonable belief that it might result in discipline, the supervisor did not attempt to discuss S.E.'s workplace conduct with him after S.E. requested that the conversation only continue in the presence of a union representative. In the August 22 conversation, the supervisor explicitly acknowledged that the conduct discussed then could result in discipline, but once S.E. asserted a right to Union representation, a right derived from the parties' collective bargaining agreement, the conversation ended. The subsequent interview regarding the August 22 incident was held on September 8 with Union representation present. S.E. later received a verbal reprimand for the August 22 incident.

Thus, the facts here alleged do not require the PERB to decide whether PELRA guarantees Minnesota public sector employees *Weingarten* rights, nor whether, if so, the initial conversation

on June 26 could be found to have given rise to a reasonable belief that it could result in disciplinary action.

It is nevertheless important to note that, even if PELRA were interpreted to protect *Weingarten* rights, the rights it affords are not so broad as to turn every ordinary conversation about employee conduct between an employer and a supervisor into an unfair labor practice unless there was a union representative present. There is simply no principle of labor law that would make all such commonplace employee-supervisor interactions illegal. Indeed, the Supreme Court's *Weingarten* decision specifically approved an NLRB statement about the limited scope of the right: "We would not apply the rule to such run-of-the-mill shop-floor conversations as, for example, the giving of instructions or training or needed corrections of work techniques." 420 U.S. 251, 257-58.

Here, the Union's allegations and supporting factual submissions are inadequate, in any case, to demonstrate a violation of *Weingarten* rights in either incident because no investigatory interview occurred in the absence of union representation after S.E. requested such representation. As the Supreme Court explained in *Weingarten*, quoting an NLRB decision:

> [T]he right arises only in situations where the employee requests representation. In other words, the employee may forgo his guaranteed right and, if he prefers, participate in an interview unaccompanied by his union representative.

420 U.S. 251, 257. Thus, under the NLRA, no *Weingarten* rights ever arise until an employee has *first* made a request for union representation and *then* the employer denies union representation.

Moreover, an employer does not violate *Weingarten* if, once an employee requests union representation, it chooses to end its investigatory conversation. The NLRB has explained that "an employer confronted with an employee request for *Weingarten* representation may respond by choosing not to move forward with the investigative interview." *YRC, Inc.*, 360 N.L.R.B. 744,

745 (2014). That's exactly what the supervisor did in both the June 26 and August 22 interactions. Each time, as soon as S.E. requested union representation, the supervisor ceased questioning S.E. Neither investigation resumed until a union representative was present.

NOTICE OF DISMISSAL

Having considered the allegations, the evidence submitted in support of the charge, and the Employer's response, we find that the Union's claim has no reasonable basis in law or fact.

RIGHT TO APPEAL

Pursuant to Minnesota Statutes § 179A.052, decisions of the PERB relating to unfair labor practices, including dismissal of unfair labor practice charges, may be reviewed on certiorari by the Court of Appeals. A petition for a writ of certiorari must be filed and served on the other party or parties and the PERB within 30 days from the date of the mailing of the PERB's decision. The petition must be served on the other party or parties at the party's or parties' last known address.

The charge is hereby DISMISSED.

Issued: February 22, 2021

Laura Cooper

Acting Chair

Minnesota Public Employment Relations Board